83677-9

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

COA No. 61027-9-I
Superior Court No. 06-1-07479-0 SEA

CITY OF SEATTLE,
Appellant/Plaintiff,

v.

ROBERT MAY,
Respondent/Defendant.

REPLY BRIEF OF APPELLANT

Rebecca C. Robertson
WSBA #30503
Assistant City Attorney
Attorney for Appellant
City of Seattle Attorney's Office
700 Fifth Avenue, #5350
Seattle, Washington 98104
206-684-7757

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES **Page**

STATUTES AND OTHER AUTHORITY

RCW 26.26
RCW 26.50
RCW 26.52
RCW 71.09.090(2)
Substitute House Bill 1642

I. RESPONSE TO ISSUES PRESENTED FOR REVIEW

A. The trial court did not abuse its discretion in finding the predicate protection order admissible. The defense challenge to the protection order is an impermissible collateral attack.

B. The defendant was afforded due process and the protection order informed him of what conduct was criminal.

II. STATEMENT OF THE CASE

On May 27, 2005, the defendant was charged with violating a King County Superior Court Order (Order), which had been issued in 1996. The dates of violation were March 11 and 24, 2005. (Docket). The defendant challenged the validity of the Order in Seattle Municipal Court. The defense claimed the King County Superior Court did not make findings of fact sufficient to issue the Order. RP 1, 2, 6-7. The trial court found that the Order was valid and applicable, and there was nothing to suggest the Superior Court did not make the correct statutory findings. RP 10. The defense was later allowed to revisit this issue, arguing that the newly located Superior Court record did not contain sufficient information for the trial court to conclude that the correct findings had been made. RP 20. The trial court again found that it was not required for the issuing court to provide an actual recitation of the

facts upon which it relied to issue a protection order. RP. 21, 22. However, the trial court did review some of the underlying evidence, presented in 1996, and concluded it likely provided a sufficient basis for issuance of the Order. RP 21.

The defendant appealed these findings. The Superior Court reversed the defendant's conviction, finding that because the language on the actual Order did not match the language of the statute exactly, the Order was invalid. The City appeals that limited ruling. The defense presents issues to this court which were not ruled on by the Superior Court.

III. ARGUMENT

1. The trial court did not abuse its discretion in finding the predicate protection order admissible. The defense challenge to the protection order is an impermissible collateral attack.

The defendant claims the trial court erred in determining that the King County Superior Court Protection Order (Order) he was charged with violating was valid and applicable. However, the case defendant cites as authority creates no new avenue of challenge to a facially valid order, and the court did not abuse its discretion in determining that the Order was valid. Unless the Order was absolutely void, the Defendant had a duty to obey it, and the Order could only be void if King County Superior Court

had no jurisdiction to impose it. When the Defendant violated the Order, it was in full force and effect. Therefore, his challenge is an impermissible collateral attack.

A defendant may not collaterally challenge the sufficiency of the evidence supporting a protection order. In State v. Joy, 128 Wn.App. 160, 114 P.3d 1228 (2005), the defendant was charged with violating a protection order and asked the criminal trial court to evaluate whether the order should have been issued in the first place. Id., at 164. The court distinguished between the facial validity of an order and the evidence supporting the order, and held that while a criminal trial court may evaluate the facial validity of an order, defendants cannot challenge the sufficiency of the evidence supporting the issuing court's decision. Id., at 164. No authority cited by defense contradicts the Joy rule.

The defendant in the case at bar asks the court to evaluate why King County Superior Court issued the Order that he violated, and why the Seattle Municipal Court held that the Order was valid. The defendant characterizes his motion as a challenge to the municipal court's finding that the Order was valid; however it is a challenge to the evidence supporting the original courts findings of fact made by the King County Superior Court when issuing the order in 1996. This collateral attack is

precisely the kind of challenge that the Joy court held is not appropriate during (or after) any resulting criminal trial for a violation of the order.

The defendant claims that the use of the word "applicable" in State v. Miller, 156 Wn.2d 23, 123 P.3d 827 (2005) creates authority for a defendant to collaterally attack a protection order, allowing a defendant to challenge the issuing court's findings of fact and conclusions of law before a criminal trial court after the defendant is charged with violating the order. This assertion is directly contrary to all other case law on the subject. See State v. Turner, 118 Wn.App. 135, 74 P.3d 1215 (2003), State v. Snapp, 119 Wn.App. 614, 82 P.3d 252 (2004), State v. Joy, 128 Wn.2d 160, 114 P.3d 1228 (2005). The term "applicable" as used in Miller essentially means facially valid, what is required to be contained on the order by statute is actually contained, and the order is applicable to the parties. It does not allow collateral challenge. There is no statement in Miller that a new test has been created.

Erroneous orders may be attacked in a collateral proceeding only if absolutely void. State ex rel Ewing v. Morris, 120 Wash. 146, 207 P. 18 (1922), State v. Lew, 25 Wn.2d 854, 172 P.2d 289 (1946), State ex rel Snohomish County v. Sperry, 79 Wn.2d 69, 483 P.2d 608 (1971). A collateral proceeding is "any proceeding which is not instituted for the

express purpose of annulling, correcting, or modifying the judgment, or enjoining its execution." Peyton v. Peyton, 68 P. 757 (Wash. 1902), citing Morrill v. Morrill, 25 Pac. 362, 11L.R.A. 155, 23 Am.St.Rpe. 94 (Ore. 1890) and Kalb v. Society, 65 Pac. 559 (Wash. 1901). A judgment is void only where the court lacks jurisdiction of the parties or the subject matter or lacks the inherent power to enter the particular order involved, "even if there is a fundamental error of law appearing upon the face of the record." Dike v. Dike, 75 Wn.2d 1, 448 P.2d 490, 495 (1968), quoting Robertson v. Commonwealth of Virginia, 181 Va. 520, 536, 25 S.E. 2d 352, 358, 146 A.L.R. 966 (1943), quoting Freeman on Judgments, 5th Ed., s 357, p. 744, and see also State v. Alter, 67 Wn.2d 111, 406 P.2d 765 (1965), Bresolin v. Morris, 86 Wn.2d 241, 543 P.2d 325 (1975).

A decision regarding an impermissible collateral attack on an anti-harassment order is instructional. State v. Noah, 103 Wn. App. 29, 9 P.3d 858 (2000) review denied, Calof v. Casebeer, 143 Wn.2d 1014, 22 P.3d 802 (2001). Noah was found in contempt of an anti-harassment order, issued by a district court. Id. at 33. On appeal, Noah contended the anti-harassment order was unenforceable because the distance provision was excessive, and its terms constituted a "prior restraint" on his right to free speech. Id. at 36-43. Division One found that even assuming the anti-

harassment order's terms were unconstitutional, the order was only voidable. Id. at 44. "The collateral bar rule generally states that a court order cannot be 'collaterally attacked in contempt proceedings arising from its violation, since a contempt judgment will normally stand even if the order violated was erroneous or was later ruled invalid.'" Id. at 46. Because Noah violated the order before attacking it, the contempt order was affirmed. Id. at 48.

In Noah, Division One cited the "inviolate rule" set down by the U.S. Supreme Court in Walker v. City of Birmingham, 388 U.S. 307, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967), which stated that even if unconstitutional, a rule of law must be obeyed until set aside in an appropriate proceeding. Noah, 103 Wn. App. at 45. Division One concluded "any attack on the order in a contempt proceeding would be collateral and unsuccessful." Id. at 46. See Walker, 388 U.S. at 309-315 (Petitioners violated an anti-parade injunction before challenging its validity. Therefore, although *substantial* constitutional issues had been raised, the court refused to consider them); Howat v. State of Kansas, 285 U.S. 181, 189-190, 42 S.Ct. 277, 66 L.Ed 550 ("It is for the court of first instance to determine the question of the validity of the law, and orders based on its decisions are to be respected, and disobedience of them is

contempt of its lawful authority,")

Here, as in Noah, even if the King County Superior Court did not make the required findings of fact necessary to issue the Order, the Order would not be void, but merely voidable. The Order was akin to the anti-harassment order in Noah. The defendant's violation of the Order, like Noah's contempt of the anti-harassment order, barred any subsequent collateral attack on its validity in the trial court. Because King County Superior Court had jurisdiction to impose the Order, until the Order is invalidated by a direct challenge, the defendant is required to obey it. The defendant raised no such direct challenge. The defendant violated a valid order. Seattle Municipal Court was therefore correct in determining that the order was facially valid and applicable.

The defendant claims that the Seattle Municipal Court did not view their challenge as a collateral attack. If so, the Seattle Municipal Court erred. However, the record indicates that the court did believe the defendant's challenge was akin to a collateral attack. The court used words and language that mirrored the case law regarding collateral attacks on a valid order when making her ruling. The trial court stated:

> In examining these particular orders, they appear to be issued by a court of competent jurisdiction. They appear to be issued pursuant to statute. They appear to be applicable to the parties. They appear to be exercised

> pursuant to statute. The issue is whether there were findings that supported the court's issuing the orders permanently....
>
> In considering the Miller case with other cases on void or voidable orders, the court would have to find that this order is not void on its face. There is nothing to show that it is inapplicable. The only possibility would be that it might be voidable if the court did not make the appropriate findings....there is nothing from looking at all terms of the order to conclude merely from the order that for some reason this court should determine that in 1996 the court and the judge at that time made an incorrect decision. Obviously, that kind of determination would have to be made by appealing the order.

RP 10.

The trial court correctly determined that the defense was attempting to collaterally attack a facially valid order some ten years after it was issued. This is not allowed under the law. While defense claims that the trial court incorrectly shifted the burden to the defense to show the order was invalid, this is not the case. In dicta, the trial court stated that if an order was not void, but merely voidable, prosecution would not be hindered as the City would have established facial validity, and the defense would have to provide more information.

Given the great risk to society posed by domestic violence situations, and the City's great interest in providing protection to domestic violence victims, the defendant's attempt to challenge King County Superior Court's findings of fact undermines long established legal

principles. If the defendant was in any way confused by the Order he was free to petition King County Superior Court for clarification or revision. He failed to do so. The fact that the terms in the Order indicating that it is permanent do not exactly mirror what is contained in the statute does not allow the Defendant to raise a collateral attack. Specific findings of fact are not included or required on the orders. The Order stated "if the duration of this order exceeds one year, the court finds that an order of less than one year will be insufficient to prevent further acts of domestic violence." RCW 25.50 requires the court find "the respondent is likely to resume acts of domestic violence against petitioner...when the order expires." The trial court was correct that these are one in the same, and the boilerplate language on the Order was statutorily sufficient.

The defense was essentially asking the trial court to review the issuing courts findings of fact and determining if they were correct or not. And now they are requesting that this court review the trial courts findings, *and* the findings of the original issuing court. If defendants are allowed this kind of collateral challenge to orders they have already violated, where does it end? Do defendants have no duty to obey orders until the U.S. Supreme Court reviews the facts underlying their issuance? This is essentially what defense is asking the court to allow. This is an

impermissible collateral attack, and the defendant's appeal should be denied.

It should be noted that the Seattle Municipal Court did review the underlying facts that supported the issuance of the Order. The court, while stating that direct appeal was the proper way to challenge the Order, stated that there was no showing that the judge in 1996 abused his or her discretion in issuing the Order, as there were allegations of assault against the defendant's wife at the time and a former wife, possible property damage, and maintaining unwanted contact. The Municipal Court found that these acts have been found sufficient by appellate courts, and so found in this case. RP 21. Should the defense be successful in getting this court to review the allegations underlying the Order, made in 1996, this court should also find that these allegations were sufficient to support issuance of a permanent order, given the history of domestic violence.

2. The defendant was afforded due process and the protection order informed him of what conduct was criminal.

The defendant claims he was mislead by the Order because it did not specifically state that it was also a violation under the Seattle Municipal Code. Additionally, he claims that the Order did not prohibit the conduct he engaged in.

First, the defendant's assertion that he was not given notice that his

violation of the Order was a crime under the Seattle Municipal Code is without merit. Under his reasoning, any protection order would have to list every single jurisdiction that could charge him with a crime when he violated the Order. The Order told defendant that violation of its terms was a crime. He was therefore on notice as to what conduct was criminal. Although State v. Wilson, 117 Wn.App. 1, 75 P.3d 573 (2003) is cited by defense to support their argument, the court in Wilson rejected the argument that the order was misleading because the order 'did not specify that the listed felonies were the only felonies which would result from a violation of the order." Id. at 13. The same analysis should be used here. Just because the Order did not list all the jurisdictions where defendant could be charged with a crime did not mean he was not informed of what conduct was criminalized under the statute. RCW 26.50 did not require this kind of notice. The defendant's due process rights were not violated.

The defense assertion that RCW 26.50 does not criminalize the defendant's conduct is also without merit. This Court should interpret the statute with the sole purpose of determining the legislature's intent. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). In this situation the legislature's intent as to whether the defendant's conduct constitutes a crime *is* entirely clear. This is because the legislature tells us what their

intent was -- and is -- in relation to RCW 26.50.

Substitute House Bill 1642 removes the language "for which an arrest is required under RCW 10.31.100 (2)," the language relied upon by the defendant. See Exhibit A. This statute passed by the Washington State House of Representative on February 28, 2007 by a vote of 97-0. It was approved by the Washington State Senate by a vote of 49-0 on April 10, 2007. It was signed into law by Governor Christine Gregoire and filed on April 23, 2007. The new bill states its purpose when in section 1 it reads:

> The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a *criminal offense* and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act. (Italics included). See Exhibit A.

The legislature then goes on to say that this was always their intention as it related to RCW 26.50:

> This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington. *Id.*

The legislature has spoken in no uncertain terms -- and it has indicated that the intent of RCW 26.50 always was, and still is, that any violation of a protection order under RCW 26.50 constitutes a crime. Had the statute been intended to be read the way the defense argues, one could

have expected to have seen language to the effect that after decriminalizing certain actions the legislature is now going back to criminalizing this behavior. But that expression is not found. And that is because the legislature never once contemplated that some courts would read RCW 26.50 out of context with the rest of the domestic violence statutes and decriminalize acts that have always been intended to be deemed crimes.

The case law suggests that this Court should follow this Legislature's clarification of 26.50. In In re the Detention of Keith Elmore, 134 Wn. App. 402 (2006), the court had to interpret the phrase "so changed" in RCW 71.09.090(2). After the trial court had already ruled on the issue, the legislature amended the statute to "clarify the 'so changed' standard.'" For the appellate court, the decision to adopt the statute's current version was an easy one. Writing for the court, Justice Penoyar stated that "we use the statute's current version to resolve this case because it expresses the legislature's intent more clearly and completely." Id. at 413.

The same is true here. The "clarification" provided by the legislature allows us to see the legislature's intention in drafting RCW 26.50, and there is no reason why this Court should not follow that

intention.

a. The defense interpretation creates an entirely absurd result.

The defense interpretation would create an entirely absurd result. When interpreting statutes, a court should try to avoid absurd results. Roy v. City of Everett, 118 Wn.2d 352, 357 (1992) ("Any statutory interpretation which would render an unreasonable and illogical consequence should be avoided."). Here, if the court adopted the defense interpretation, this would be absurd. This would mean that a foreign protection order -- e.g., a no-contact order issued by a court in Guam -- would have greater force than an order issued by a Washington court. This would also mean that a person with a no-contact could not go within 500 feet of a protected person's residence, but could start to yell in the protected person's face if they were 501 feet away from the residence. And finally, this would also mean for that the government to ensure any meaningful protection for victims, it would have to list every possible area in Seattle where the victim would possibly go (i.e., the store, the park etc.). These examples strongly suggests why the defense position is entirely untenable.

b. The defense interpretation is inconsistent with the statutory scheme.

When interpreting a statute, a court must interpret the provisions to

effectuate a consistent statutory scheme. State v. Chapman, 140 Wn.2d 436, 448 (2000). In other words, the court must interpret the statute taken into considerations other statutory provisions. Here, the statutory scheme -- which provides for expansive protection of victims of domestic violence by criminalizing particular behaviors – shows that the defense interpretation of RCW 26.50.110 renders the rest of the statutory scheme nonsensical. For example:

- RCW 26.50.060 (h) states that the court may provide the relief of restraining the respondent from having any contact with the victim of domestic violence;
- Willful violation of a court order under RCW 10.99.040 (4) (a) is punishable under RCW 26.50.110; RCW 10.99.040 4 (b) mandates that the order must state in the legend that: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest." It also adds that "You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions."
- RCW 26.09.060 states that in temporary restraining orders where the person being restrained disturbs (but doesn't threaten or harass) another party, this person is subjected to a criminal offense under RCW 26.50.

The defense reading of the statute simply does not comport with the statutory scheme against domestic violence. State v. Chapman, 140 Wn.2d 436, 448 (2000) (noting how related statutory provisions must be harmonized to effectuate a consistent statutory scheme). What's more, it

renders important victim protections essentially meaningless. When a respondent of a protection order violates the order to not contact the petitioner directly or indirectly, under the defense interpretation, the respondent has no criminal remedy. In fact, the respondent is unable to count on the police to get involved. According to the defendant's reasoning, the best a respondent could do is go back to the issuing court and ask that the petitioner be held in contempt of court.

In addition, the defense reading of the statute renders the specified criminal warnings on the orders incorrect statements of the law. Had the legislature intended to decriminalize non-threatening, non-harassing, non-assaultive violations of a court order, one would have expected to have seen a change in the criminal warnings. But there have been no such changes. And that's because the defense reading of the statute in the context of the entire statutory scheme is incorrect and leads to the already articulated absurd results that the case law mandates must be avoided.

c. <u>The defense interpretation is inconsistent with the broader purpose.</u>

Further, the defense interpretation is entirely inconsistent with the broader

legislative goal to protect victims of domestic violence. When interpreting statutes, the court must attempt to interpret a statute consistent with the

overall statutory purpose. Roy, 118 Wn.2d at 357 ("Legislative intent is to be determined in the context of the entire statute, interpreted in terms of the statute's general purpose."). First and foremost, this court should bear in mind that the Legislature's purpose in creating no-contact orders and punishments for violating them is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide." State v. Ward, 148 Wn.2d 803, 810; 64 P.3d 640 (2003) (describing the felony enhancement provisions associated with violations of former Chapter 10.99 RCW). To effectuate this goal, the Legislature created several statutory means of obtaining no-contact and/or protection orders and allowed victims and petitioners to use any of those means available to obtain an order when needed. See inter alia, RCW chapters 10.99, 26.09, 26.10, 26.26, and 26.50. In addition, the Legislature provided that Washington courts would recognize no-contact or protection-type orders issued in other jurisdictions, as long as certain fundamental due process requisites were satisfied. See RCW 26.50.110 and 26.52.020. Indeed, in regard to foreign protection order, the Legislature went so far as to declare "a presumption in favor of validity where the order appears authentic on its face. RCW 26.52.020.

d. Neither the rule of lenity nor the last antecedent rule apply.

In Re Post Sentencing Review of Charles, 135 Wn 2d. 239, 955 P. 2d 798 (1998) clarifies that the rule of lenity requires the court to interpret a statute in the defendant's favor but only if two prerequisite conditions apply. First, the statute must be ambiguous. Id. Second, legislative intent to the contrary must be absent. Id. Here, the statute is not ambiguous when the court interprets the statute in concert with the entire domestic violence statutory scheme. Second, this court would be hard pressed to reach the conclusion in view of the purpose of the domestic violence statute and the current legislature's clarification that legislative intent to the contrary is absent. Because the defense fails to establish both of these condition precedents, the court should not consider the rule of lenity.

The Last Antecedent Rule should also not control. Berrocal v. Fernandez, 155 Wash. 2d 585, 121 P. 3d 82 highlights why it should not control. There in a employment law wage claim action, Division I of the Court of Appeals granted a motion for summary judgment by finding that the last antecedent rule applies. But the Washington State Supreme Court reversed, finding that the court needs to make sure than the last antecedent rule does run afoul of the requirement that they "remain careful to avoid unlikely, absurd or strained" results. Id. The court found that the practical

implication of applying last antecedent rule was that individuals were not considered employees when they were sleeping but when awoken to ward off predators they would be considered employees. As in Berrocal, there would be absurd outcomes and practical difficulties that would arise should this court apply the last antecedent rule. As a result, this court should adopt the approach taken by the Washington State Supreme Court and determine that it cannot adopt the reasoning of the last antecedent rule without running afoul of creating unlikely, absurd or strained results.

In short, by ignoring what the legislature stated about its intent and focusing solely on "rules" of statutory interpretation, the defense argument would still lose, as the defense interpretation is inconsistent with the interpretation of the statute as a whole, with the purpose of the statute, and would create an absurd result and lead to other portions being meaningless

The defense challenge to the protection order should be denied.

IV. CONCLUSION

For the foregoing reasons the Court should find the defendant's attack on the Order is collateral and deny their request for review of the issues not considered in Superior Court..

Respectfully submitted this 6th day of March, 2008.

Rebecca C. Robertson,
WSBA# 30503
Cindi Williams,
WSBA # 27654
Assistant City Attorneys
Attorneys for Respondent

EXHIBIT A

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1642

60th Legislature
2007 Regular Session

Passed by the House February 28, 2007
Yeas 97 Nays 0

CERTIFIC

I, Richard Nafziger, Chief (
Representatives of the State
hereby certify that the attac
HOUSE BILL 1642 as passe
Representatives and the Sen
hereon set forth.

Speaker of the House of Representatives

Passed by the Senate April 10, 2007
Yeas 49 Nays 0

Chief Clerk

President of the Senate

Approved

FILEI

Secretary of State
State of Washington

Governor of the State of Washington

SUBSTITUTE HOUSE BILL 1642

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Pedersen, Lantz, Williams, Moeller, Wood, Kirby, O'Brien, Chase, Ormsby and Green)

READ FIRST TIME 02/16/07.

AN ACT Relating to criminal violations of no-contact orders, protection orders, and restraining orders; amending RCW 26.50.110; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1** The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act. This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington.

Sec. 2 RCW 26.50.110 and 2006 c 138 s 25 are each amended to read as follows:
(1)(a) Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained

knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:
(i) The restraint provisions((~~, or of~~)) prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;
(ii) A provision excluding the person from a residence, workplace, school, or day care((~~, or of~~));
(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location((~~,~~)); or ((~~of~~))
(iv) A provision of a foreign protection order specifically indicating that a violation will be a crime((~~, for which an arrest is required under RCW 10.31.100(2) (a) or (b), is a gross misdemeanor except as provided in subsections (4) and (5) of this section~~)).
(b) Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.
(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.
(3) A violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.
(4) Any assault that is a violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to

assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

--- END ---